No. 17-1351

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**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

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INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.,
*Plaintiffs-Appellees,*

*v.*

DONALD J. TRUMP, et al.,
*Defendants-Appellants.*

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Appeal from the United States District Court
for the District of Maryland, No. 8:17-cv-00361-TDC
The Honorable Theodore D. Chuang, Judge Presiding

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# BRIEF OF CHICAGO, LOS ANGELES, NEW YORK, PHILADELPHIA, AND OTHER MAJOR CITIES AND COUNTIES AS *AMICI CURIAE* IN SUPPORT OF AFFIRMANCE AND IN OPPOSITION TO MOTION OF DEFENDANTS-APPELLANTS FOR A STAY PENDING APPEAL

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## STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

*Amici* include some of the largest cities and counties in the United States. Chicago, Los Angeles, New York City, and Philadelphia alone have a combined population of over 16.6 million, including more than five million immigrants from 150 countries.[2] These cities account for almost one-fifth of the gross domestic product.[3] As of 2015, approximately 213,100 residents in the Chicago, Los Angeles, and New York City metropolitan areas were born in five of the six countries targeted by the Executive Order.[4]

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[1] Pursuant to this court's April 3, 2017 Docket Correction Notice (4th Cir. Dkt. 78), *amici* submit this corrected brief addressing both the merits and defendants' motion for a stay pending appeal, and withdraw their prior brief (4th Cir. Dkt. 61-1).

The parties have consented to the filing of this brief. It was not authored, in whole or in part, by counsel for any party, and no such counsel or party contributed money that was intended to fund preparing or submitting the brief. No person other than *amici* or their counsel contributed money that was intended to fund preparing or submitting the brief.

[2] Support for all data is in the appendix to this brief.

[3] Ted Hesson, *Why American Cities Are Fighting to Attract Immigrants*, https://www.theatlantic.com/business/archive/2015/07/us-cities-immigrants-economy/398987/ (NYC, LA, Houston, and Chicago are roughly 1/5 of GDP).

Chicago, Los Angeles, and New York City are some of the largest employers in their jurisdictions, collectively employing approximately 365,000 people. In New York City, 34% of city workers are foreign-born; in Los Angeles, 22% are. Immigrants also make up a substantial portion of our cities' private workforces: 46% of the 4.3 million workers in New York; 26.5% of the 1.27 million workers in Chicago; and approximately 17% of the 640,000 workers in Philadelphia. At least 12,500 private employees work on international visas in Chicago alone. Immigrants make up a majority of New York City's business owners, 44% in Los Angeles, 27% in Chicago, and 14% in Philadelphia.

Chicago and Los Angeles welcome and resettle some of the largest numbers of refugees in the United States. From October 2015 to September 2016, approximately 2,100 refugees were resettled in the Chicago area, including nearly 800 from the targeted countries. 2,800 were resettled in the Los Angeles area, 1,900 from Iran alone. 682

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[4] Alan Berube, *These communities have a lot at stake in Trump's executive order on immigration*, https://www.brookings.edu/blog/the-avenue/2017/01/30/ these-communities-have-a-lot-at-stake-in-trumps-executive-order-on-immigration/.

refugees arrived in Philadelphia, including 176 from the targeted countries. Approximately 1,300 refugees have been resettled in New York City in the past five years.

Chicago, Los Angeles, New York City, and Philadelphia also operate or are served by large international airports. More than 400 international flights, bringing more than 60,000 passengers, arrive daily in Chicago and Los Angeles alone. The tourism sectors of the local economies in Chicago, Los Angeles, New York City, and Philadelphia create roughly $70 billion a year in local revenue. In 2016, our cities hosted more than 20 million foreign visitors, who spent an estimated $6.3 billion in Los Angeles County, and $1.88 billion in Chicago, including $1.25 million by tourists from the six targeted countries. As a result of the Executive Order, New York City now predicts a 300,000-person drop in foreign visitors this year.[5] More generally, "[f]ollowing President Trump's Jan. 27 executive order banning people from seven predominantly Muslim countries from entering the United States, the demand for travel to the United States took a nosedive, according to data from several travel companies and research firms.[6]

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[5] Patrick McGeehan, *New York Expects Fewer Foreign Tourists, Saying Trump Is to Blame*, https://www.nytimes.com/2017/02/28/nyregion/new-york-foreign-tourists-trump-policies.html?_r=0.

Chicago, Los Angeles, New York City, and Philadelphia together have 162 four-year colleges and universities, with approximately 100,000 international students. Chicago is also home to 44 major hospitals, which serve thousands of international patients a year. The Middle East region is the top source of patients traveling to the U.S. for medical care.[7]

*Amici* are profoundly opposed to the Executive Order, which is as misguided as it is unconstitutional. Our cities serve as gateways for immigrants and refugees starting new lives in America. And when they have come, "[e]verywhere immigrants have enriched and strengthened the fabric of American life."[8] Perhaps uniquely in the world, the identity of American cities has been forged since the inception of our Nation from the toil of immigrants and their embrace of the American ideal.

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[6] Shivani Vora, *After Travel Ban, Interest in Trips to U.S. Declines*, https://www.nytimes.com/2017/02/20/travel/after-travel-ban-declining-interest-trips-to-united-states.html.

[7] Kristen Schorsch, *How Trump's Travel Ban Could Hit Medical Tourism Hard*, http://www.chicagobusiness.com/article/20170201/news03/170209996/how-trumps-travel-ban-could-hit-medical-tourism-hard.

The district court properly determined that plaintiffs were likely to succeed on their Establishment Clause claim, at least, and would suffer irreparable harm if the Order were not enjoined. Further supporting the district court's determination, the Order will cause irreparable harm to cities and counties across the United States. The Order seriously endangers our communities. Among other things, the Order undermines trust and cooperation between local law enforcement and immigrant communities, which is necessary to effectively detect terrorist activity and combat crime. The Order also harms our businesses, educational institutions, and hospitals; limits our labor pool; decreases our tax revenues; and dampens our tourism industry. *Amici* file this brief to urge the court to affirm the district court's preliminary injunction and deny defendants' motion for a stay pending appeal.

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[8] John F. Kennedy, A Nation of Immigrants 3 (Harper rev. ed 2008).

## SUMMARY OF ARGUMENT

Defendants have failed to establish that the district court abused its discretion in issuing the preliminary injunction, or that the injunction should be stayed.

The district court properly recognized that section 2(c) of the Executive Order violates the Establishment Clause. Under the extraordinary circumstances presented here, deference to the claimed national security rationale for the Order is not warranted. The record presents compelling evidence that the Order was motivated by President Trump's stated belief that "Islam hates us" and his related desire to exclude Muslims. Broadcast many times and in many ways, the President's anti-Muslim message has been clear and consistent.

The Order also unlawfully discriminates based on national origin. Both the equal protection component of the Fifth Amendment's Due Process Clause and the Immigration and Nationality Act of 1965 prohibit the Order's arbitrary, blanket discrimination.

The district court's balancing of the interests on both sides amply justifies the injunction. The public interest as reflected in the profound harm inflicted on *amici* and their communities provides further support. This court should affirm the preliminary injunction.

Defendants have also failed to make the strong showing required to obtain a stay pending appeal. The speculative harms defendants foresee do not outweigh the concrete, imminent, and dramatic harm to plaintiffs and their *amici*.

## ARGUMENT

Applying *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), the district court found that plaintiffs were likely to prevail on their Establishment Clause claim, R. 149 at 38; that they would suffer irreparable harm if the Executive Order takes effect, *id.* at 39; and that "Defendants are not directly harmed by a preliminary injunction preventing them from enforcing an Executive Order likely to be found unconstitutional," *id.* That ruling is not an abuse of discretion. Accordingly, it should be affirmed, and in the interim it should not be stayed.

## I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT PLAINTIFFS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS.

### A. The Order Violates the Establishment Clause.

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente,* 456 U.S. 228, 244 (1982). Because section 2(c) of the Executive Order "does not differentiate among religions on its face," R. 149 at 25, the district court reviewed it under the three-part test of *Lemon v. Kurtzman,* 403 U.S. 602, 612-13 (1971). If a policy fails any one of the three parts, it violates the Establishment Clause, *Edwards v. Aguillard,* 482 U.S. 578, 583 (1987), and here, the Order fails at least the first, in that its predominant purpose is to advance religion. As the district court recognized, there is every indication that the predominant purpose of the Order was grounded in religion, and that the stated secular purpose of protecting national security was, at best, a secondary consideration. R. 149 at 35.

To begin, the anti-Muslim statements by President Trump and his advisors have been well documented. E.g., R. 149 at 8-10, 27-29. The district court properly found that these statements showed a rampant

and palpable discriminatory purpose. *Id.* at 26-31. Two other district courts likewise found. *Hawaii v. Trump*, 2017 WL 1011673, at **11-14 (D. Haw. Mar. 15, 2017); *Hawaii v. Trump*, 2017 WL 1167383, at **5-7 (D. Haw. Mar. 29, 2017); *Aziz v. Trump,* 2017 WL 580855, at **8-9 (E.D. Va. Feb. 13, 2017).[9]

It is of no moment that the Order now disclaims discriminatory intent and professes a national security purpose, or that it lacks the prior order's explicit religious preference. "Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). For this reason, it is "the duty of the courts" to distinguish a "sincere" secular purpose from one that is a "sham," or that is "secondary" to a "predominately religious" purpose. *McCreary County v. ACLU*, 545 U.S. 844, 862 (2005). Here the religious objective could not be more apparent: the Executive Order, by the administration's own admissions, was intended to target Muslims. That the ban is temporary and against fewer than all Muslims in the world ignores that temporary and partial are not defenses to an Establishment Clause violation.

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[9] Campaign statements may not always evince intent, since candidates sometimes pledge one thing and do another once elected. But here, President Trump has confirmed the Order's discriminatory purpose since taking office – and it functions exactly as he promised when campaigning.

Defendants argue that the Court should not "plop Establishment Clause cases from the domestic context over to the foreign affairs context." Brief for Appellants 42 (citation omitted). That simply ignores the Order's profound and immediate domestic effects – it both seeks to shape the make-up of the American community, and declares to those already here that Muslims are less worthy of membership. Unlike the President's decision to treat (or not) with a foreign theocracy, or to make similar foreign policy judgments, the Order injures core Establishment Clause values and protections here at home.

The Order's asserted national security interests are unsupported. The Order states that its restrictions are necessary to prevent "foreign nationals who may commit, aid, or support acts of terrorism" from entering the county. Order § 1(a). But as the district court correctly observed, the record provides "strong indications that the national security purpose is not the primary purpose for the travel ban." R. 149

at 35. The Ninth Circuit likewise observed that there is "no evidence that any alien from any of the countries named in the Order has perpetrated a terrorist attack in the United States." *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017). Indeed, no Americans have been killed in terrorist attacks on U.S. soil by foreign nationals from the targeted countries since 1975.[10] DHS itself reports that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." R. 95-10 at 93.

The Order's assertion that "[s]ince 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States," Order § 1(a), does not fill that gap because it does not tie that number to the six countries identified in section 2(c).[11] These numbers are further suspect because they include individuals initially wrapped into a "terror-related" investigation, but later convicted of charges with no connection to terrorism.[12]

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[10] Alex Nowrasteh, *Where Do Terrorists Come From? Not the Nations Named in Trump Ban,* http://www.newsweek.com/where-do-terrorists-come-not-seven-countries-named-550581.

[11] The Order also states that Attorney General Sessions has reported that "more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations" by the FBI. Order § 1(h). Tellingly, the Order does not claim that any of these refugees came from the six targeted countries.

Accordingly, defendants have failed to meet their burden to demonstrate that the district court abused its discretion in finding that plaintiffs are likely to succeed on the merits of their Establishment Clause claim.

### B. The Order Unlawfully Discriminates Based On National Origin.

The federal government's defense that the Executive Order is not a religious ban at all but one based on national origin does not save it. At the outset, as we explain, the Order's reliance on national origin is merely a pretext for discrimination against Muslims. Regardless, the pretextual national origin basis for the classification is itself unlawful.

For one thing, the Order violates the equal protection component of the Fifth Amendment's Due Process Clause.[13] By banning nationals of countries not shown to perpetrate terrorism in the United States and not banning nationals of countries that do, the Executive Order is so staggeringly underinclusive and overinclusive for the stated goal of national security and so profoundly arbitrary that it is unconstitutional for that reason alone. Utterly irrational classifications that do not serve the stated purpose violate equal protection. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985) ("The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."); *see also Romer v. Evans*, 517 U.S. 620, 635 (1996) (invalidating under the Equal Protection Clause "a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; . . . a classification of persons undertaken for its own sake").

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[12] Shirin Sinnar, *More Misleading Claims on Immigrants and Terrorism*, https://www.justsecurity.org/38341/misleading-claims-immigrants-terrorism.

[13] Although the district court did not reach the merits of plaintiffs' equal protection claim, this court may affirm "on the basis of any ground

Beyond that, the Order violates the Immigration and Nationality Act of 1965 ("INA"). "During most of its history, the United States openly discriminated against individuals on the basis of race and national origin in its immigration laws." *Olsen v. Albright*, 990 F. Supp.

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supported by the record even if it is not the basis relied upon by the district court." *Ostrzenski v. Seigel*, 177 F.3d 245, 253 (4th Cir. 1999).

31, 37 (D.D.C. 1997). But, as President Kennedy noted, "the national origins quota system ha[d] strong overtones of an indefensible racial preference." John F. Kennedy, A Nation of Immigrants 45 (Harper rev. ed 2008). Accordingly, "[t]hroughout the latter half of the Twentieth Century, Congress moved away from such discriminatory policies. The most profound change was the [INA]," which "eliminated discrimination on the basis of race and national origin." *Id.*; *see also* 1965 U.S.C.C.A.N. 3328, 3328 (quoting S. Rep. No. 89-748) (principal purpose of INA was "to repeal the national origin quota provisions of the Immigration and Nationality Act, and to substitute a new system for the selection of immigrants to the United States"). The INA could not be more clear: "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A). Moreover, "[t]he legislative history surrounding the [INA] is replete with the bold anti-discriminatory principles of the Civil Rights Era. Indeed, the [INA] was passed alongside the Civil Rights Act of 1964 and the Voting Rights Act of 1965." *Olsen*, 990 F. Supp. at 37. The Executive Order is in direct violation of section 1152(a).

Strong enforcement of the INA's antidiscrimination provision is profoundly important to *amici*, which have adopted similar laws prohibiting discrimination in their local communities in all aspects of life – housing, employment, public accommodation, transportation, schooling, government services, and public employment. *E.g.*, Municipal Code of Chicago, Ill. §§ 2-160-010, 5-8-010, 9-115-180, 13-72-040; Los Angeles Charter §§ 104(i), 1024; Los Angeles Admin. Code §§ 4.400, 10.8, 10.13; New York City Charter, § 900; N.Y.C. Admin. Code §§ 4-116; 8-107; Philadelphia Code, §§ 9-1101, 9-1103, 9-1106, 9-1108. Such laws reflect *amici*'s strong commitment to equal opportunity and equal rights, just as section 1152(a) does. The Executive Order's blatant discrimination based on national origin turns the clock back on this important civil rights guarantee, and it should be set aside.

To be sure, the President has broad authority over the entry of aliens generally: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f). But for two reasons in particular, section 1182(f) does not save the Executive Order.

First, section 1152(a)'s prohibition on discrimination was enacted after section 1182(f) and is properly understood as a limitation on the authority previously granted under section 1182(f) to suspend entry. "[T]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). Thus, although section 1182(f) grants the President authority to suspend entry of a class of immigrants whose entry "would be detrimental to the interests of the United States," section 1152 declares Congress's determination that it is *not* in the national interest to discriminate based upon national origin. This reading also construes these provisions "as a symmetrical and coherent regulatory scheme," *Gustafson v. Alloyd Co.,* 513 U.S. 561, 569 (1995), and "fit[s] all parts into an harmonious whole," *FTC v. Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959). By contrast, to read section 1182(f) as though section 1152(a) did not exist is inconsistent with settled rules of statutory construction and should be rejected. *E.g., Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991) ("[W]e construe statutes, where possible, so as to avoid rendering superfluous any parts thereof.").

Second, section 1182(f) should be read in light of the grounds for denial of admission for terrorist activity that are specifically set forth in section 1182(a)(3)(B). That provision mandates an individualized inquiry; it does not authorize blanket exclusion based solely on the applicant's nation of origin.

Even considering section 1182(f) in isolation, the Executive Order's exclusion of all immigrants and refugees from six countries, solely because of the happenstance of their birthplace, cannot stand.[14]

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[14] The district court agreed that plaintiffs showed a likelihood of success on their claim that the Executive Order violates section 1152(a) by restricting the issuance of immigrant visas, although it did not find a likelihood of success on the claim that section 1152(a) prevents the President from barring entry in a discriminatory fashion. R. 149 at 24-25. With respect to the district court, "[a]ll laws should receive a sensible construction." *United States v. Kirby*, 74 U.S. 482, 486 (1868). Defendants actually agree that taken together, the district court's decision on these points is "senseles[s]." Brief for Appellants 16. But so is defendants' attempt to reconcile these provisions. Allowing the President to deny entry based on national origin to persons who could

The plain language of section 1182(f) requires a determination that the entry of aliens or a class of aliens is "detrimental to the interests of the United States," and here it is simply not possible to say that every single person, or even a majority of persons, born in the six targeted countries presents a security risk to the United States. Most obviously perhaps, this group includes people who left their birthplace as infants or children, and perhaps were born to parents who themselves were not citizens of the country where their children were born. These immigrants and refugees could have lived nearly their entire lives in countries that even the federal government does not think present any risk to the United States, and yet they are banned solely because of where they were born. Even on immigration matters, discretion must be exercised "in a reasoned manner." *Judulang v. Holder*, 565 U.S. 42, 53 (2011). A classification based on national origin is not rational.[15]

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not be denied a visa on that basis makes no sense. Instead, to harmonize these provisions, section 1182(f) should be read to allow the denial of entry only on other grounds, or information obtained after a visa has issued, but not on the precise basis that section 1152(a) forbids.

[15] The Executive Order states the six targeted countries are unable to "share or validate" data about individuals seeking to enter the United

## II. THE BALANCE OF THE EQUITIES FAVORS AN INJUNCTION, AND A STAY SHOULD BE DENIED.

Defendants have failed to establish that the district court abused its discretion in concluding that plaintiffs would suffer irreparable harm in the absence of a preliminary injunction. The court carefully catalogued the specific, concrete harms to both the individual and organizational plaintiffs if the Order were not enjoined. R. 149 at 15-18. By contrast, defendants identify no actual irreparable harm from the injunction. They rely upon the general proposition that any interference with government activity is necessarily irreparable, Brief for Appellants 54, but the district court properly determined that "Defendants are not directly harmed by a preliminary injunction preventing them from enforcing an Executive Order likely to be found unconstitutional," R. 149 at 39. Moreover, as the district court specifically found, "the national security purpose, even if legitimate, is a secondary *post hoc* rationale." *Id.* at 35.

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States. Order § 1(d). But this assertion regarding vetting cannot be read as a blanket "determination" that all individuals from the six countries are "detrimental" to the United States in violation of section 1182(f).

Beyond that, the Executive Order subverts the very national security purpose it claims to serve and inflicts profound harms on *amici* and their communities. The unlawful discrimination based on religion and national origin undermines trust between our law enforcement agencies and our immigrant communities, which in turn hinders our ability to protect our residents. Chicago, Los Angeles, New York City, Philadelphia, and the other *amici*, as financial, political, and cultural hubs in the United States, draw unique attention from individuals looking to harm this country. Additionally, local law enforcement officers play an increasingly important role in efforts to detect and protect against national security threats. For these and other reasons, cities are a crucial part of the first-line defense against terrorism.[16] To serve the purpose of national security, our cities must be able to work in coordination with everyone in our ethnically diverse communities. Even at the strictly local level, the safety and security of our residents and visitors depends upon cooperation between the residents and local police. The United States Department of Justice's own Office of Community Oriented Policing Services has emphasized this fact time and again.[17] With decades of experience policing neighborhoods that are home to immigrant populations, *amici* are keenly and uniquely aware that ostracized residents are reluctant to report crimes or suspicious behavior. In short, by targeting immigrants based on religion and national origin, the Executive Order makes *all* of our residents and visitors, and indeed everyone in the country, less safe.

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[16] *E.g.*, Mitch Silber and Adam Frey, *Detect, Disrupt, and Detain: Local Law Enforcement's Critical Roles in Combating Homegrown Terrorism and the Evolving Terrorist Threat*, http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2508&context=ulj; David Thacher, *The Local Role in Homeland Security*, 39 Law & Soc'y Rev. 635 (Sept. 2005), https://deepblue.lib.umich.edu/bitstream/handle/2027.42/73848/j.1540-5893.2005.00236.x.pdf?sequence=1; *DHS Announces Expansion of the Securing the Cities Program*, https://www.dhs.gov/news/2015/09/14/dhs-announces-expansion-securing-cities-program.

The Order's message that citizens of majority-Muslim countries threaten national security inflicts other harm. Distrust and fear of such individuals give rise to hate crimes against anyone different. In the first 34 days following the 2016 election, 1,094 hate crimes and lesser hate incidents were reported nationwide; 315 were categorized as anti-immigrant, and 112 anti-Muslim.[18] Cities across the country saw hate crimes rise dramatically in the three months after the election. New York City reported twice the number of hate crime incidents compared to the same period a year prior; Chicago had twice as many arrests for hate crimes; in Philadelphia, there was a 157% increase in the number of hate crimes reported to police, and a 1433% increase in hate or bias incidents reported to the Philadelphia Commission on Human Relations. In Los Angeles, hate crime incidents doubled, to 30, in the month following the presidential election. And in the first five weeks of 2017, the number of hate crimes recorded in Chicago was more than triple the number for the same period in 2016.

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[17] *E.g., Community Policing Defined*, DOJ, Office of Community Oriented Policing Services (rev. 2014), https://ric-zai-inc.com/Publications/cops-p157-pub.pdf.

Foreign residents of our cities who feel unwelcome are more likely to cut themselves off from public life and public programs. They may refuse to participate in public health programs such as vaccinations or seek medical care for contagious diseases. They may keep their children out of school to avoid harassment and stay away from places of worship. And these effects will not be limited to individuals from the six targeted countries. Others will have cause to worry that the public will embrace the Executive Order's anti-Muslim, anti-immigrant stance. The Order therefore places millions of people at risk of harm or being driven underground, making both those residents and our cities less safe.

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[18] *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election.

Finally, the incredibly broad exclusion of immigrants from the targeted six countries – by the federal government's own concession, many orders of magnitude broader than any threat it perceives – inflicts serious financial and social costs on *amici*. At the outset, while the Executive Order itself applies only to people from these six countries, the anti-immigrant sentiment reflected in the Order dissuades immigrants and travelers from many others. As a result of the Order, significant numbers of travelers are simply not coming to the United States, to say nothing of immigrants who are dissuaded from choosing to live here. This will cost *amici* hundreds of millions in tourism dollars, as well as workers and entrepreneurs with unique skills and training. Our colleges, universities, and hospitals will suffer as well, from a lack of diversity, and the loss of some of the best talent in the world. *Amici* urge the court to weigh these costs in the balance of harms, and to affirm the preliminary injunction.

A stay is unwarranted. To obtain a stay pending appeal, defendants must make a "strong showing" that they are likely to succeed on the merits. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Defendants are not likely to prevail, as we explain above. Moreover, the status quo since January 27, 2017, when the first Executive Order was enjoined is that travel and immigration restrictions have not been in place in this country. There is no reason to upset that status quo. Defendants have not acted as though time is of the essence. President Trump did not issue the revised Executive Order until nearly one month after the Ninth Circuit declined to stay the order enjoining the original Executive Order. By contrast, this court has expedited the appeal, and will hear it initially *en banc* – significant steps toward a prompt, definitive ruling.

Allowing the Order to go into effect on an interim basis would itself cause irreparable harm. *Amici* pursue their anti-terrorism efforts and hate-crime enforcement every day, and the Order's so-called "pause" in immigration and refugees will not pause the need for that vigilance, nor the Order's counterproductive impact on our efforts. At the same time, hundreds of thousands of workers, tourists, students, and patients worldwide are making life-changing – even life-and-death – decisions now. At least some will be unwilling or unable to put their lives on pause, but will make an irrevocable decision not to travel to the United States if the injunction is stayed. Accordingly, the motion to stay should be denied.

## CONCLUSION

The district court's preliminary injunction should be affirmed, and defendants' motion for a stay pending appeal should be denied.

Respectfully submitted,

s/Benna Ruth Solomon

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# APPENDIX

# CHICAGO

The population of the Chicago is 2,717,534.[1]

Chicago has residents from more than 127 foreign countries.[2]

At least 572,066 of our residents are immigrants.[3]

3,731 of Chicago's residents were born in Iran, Libya, Somalia, Sudan, Syria, and Yemen, of whom 1,650 are non-citizens.[4]

Approximately 1.27 million people are employed in Chicago.[5] Of those, 26.5% are foreign-born immigrants,[6] including an estimated 976 non-citizen immigrants from the six targeted countries.[7] The City itself employs more than 32,000 people.[8]

Approximately 27% of Chicago's business owners are immigrants,[9] of whom an estimated 0.7% come from the six targeted countries.[10]

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[1] U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.
[2] *Id.*
[3] *Id.*
[4] U.S. Census Bureau, American Community Survey PUMS 1-Year 2015 Data.
[5] U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.
[6] *Id.*
[7] *Id.*
[8] https://www.cityofchicago.org/city/en/depts/dhr/dataset/current_employeenames salariesandpositiontitles.html.
[9] https://www.americanimmigrationcouncil.org/research/new-americans-illinois.
[10] *Id.*

At least 12,500 private employees work in Chicago on international visas.[11]

In 2016, approximately 2,091 refugees were resettled in Chicago, including 794 from the six targeted countries.[12]

Chicago has 34 four-year colleges and universities, with more than 13,789 international students in the 2015-16 academic year.[13] City Colleges of Chicago (CCC) has seven colleges, with approximately 558 international students in the 2015-16 academic year. 175 of these were born in, arrived on visas from, or are nationals of the six countries.[14]

The tourism sector of Chicago's local economy accounts for $911 million a year in local tax revenue and $2.3 billion in hotel revenue alone.[15]

232 flights arrive at Chicago airports from international destinations every day, bringing 31,856 passengers.[16]

Each international flight arrival yields approximately $212,000 in local economic impact.[17]

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[11] http://ireports.wrapsnet.org/ (by destination and nationality).
[12] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, http://ireports.wrapsnet.org/.
[13] http://www.collegesimply.com/colleges/illinois/chicago/four-year-colleges/; http://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics/US-State-Fact-Sheets/2016.
[14] Jeff Donoghue, CCC, 3/9/17; (includes credit students only).
[15] Alfred Orendorff, ChooseChicago.
[16] http://www.flychicago.com/business/CDA/factsfigures/Pages/airtraffic.aspx.
[17] Jonathan Leach, Chicago Department of Aviation.

In 2016, Chicago welcomed 54.1 million visitors,[18] 1.62 million of whom visited from overseas.[19] Approximately 1,000 international visitors were from the six targeted countries.[20]

In 2015, tourism brought $14.66 billion in direct spending to Chicago. Annually, international visitors to Chicago spend an estimated $1.88 billion, generating $112 million in state and local taxes.[21]

The average overseas visitor spends about $2,313 per trip visiting Chicago.[22]

Tourists from the six countries account for an estimated $1.25 million of local economic impact per year.[23]

Chicago is home to 44 major hospitals,[24] which serve thousands of international patients a year. The Middle East is the top source of patients traveling to the U.S. for medical care.[25]

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[18] https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2016/april/Mayor-Choose-Chicago-Announce-Record-Tourism-2015.html.

[19] U.S. Department of Commerce, National Travel and Tourism Office. Original source: http://tinet.ita.doc.gov/outreachpages/download_data_table/.2015_States_and_Cities.pdf.

[20] Alfred Orendorff, ChooseChicago.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] http://www.ihatoday.org/uploadDocs/1/hospcounty.pdf; https://www.cityofchicago.org/city/en/depts/cdph/supp_info/clinical_health/Find_a_clinic.html.

[25] http://www.chicagobusiness.com/article/20170201/news03/170209996/how-trumps-travel-ban-could-hit-medical-tourism-hard.

Chicago established the Chicago Legal Protection Fund to increase legal services for immigrant communities across the city.[26] The Fund was allocated $1.3 million for FY2017 to support organizations – including Heartland Alliance's National Immigrant Justice Center (NIJC) and the Resurrection Project (TRP) – and serve more than 20,000 immigrants through community-based outreach, education, legal consultations, and legal representation.[27]

NIJC also received $150,000 from Chicago for fiscal year 2017 for its Immigrant Children's Protection Project, which provides legal services to unaccompanied children held in Chicago-area shelters.[28]

In calendar year 2016, NIJC and TRP represented clients from at least 132 countries, including all six targeted countries.[29]

In Chicago, there were twice as many arrests for hate crimes in the three months after the Presidential election than during the same period in the prior year.[30]

In the first five weeks of 2017, the number of hate crimes recorded in Chicago was more than triple the number for the same period in 2016. Additionally, hate crimes categorized as anti-Muslim or anti-Arab hit five-year highs in Chicago in 2016.[31]

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[26] Seemi Choudry, Director of Office of New Americans, Chicago.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Brandon Nemec, Mayor's Office liaison with Chicago Police Department.
[31] http://www.chicagotribune.com/suburbs/daily-southtown/news/ct-sta-hate-crimes-increase-st-0305-20170303-story.html.

## NEW YORK CITY

The population of New York City is 8,550,405 as of 2015.[50]

New York has residents from more than 150 foreign countries.[51]

New York City is home to 3 million foreign-born New Yorkers, about 37% of the City's population. Approximately 49% of New Yorkers speak a language other than English at home.[52]

New York City is home to an estimated 26,566 individuals born in Sudan, Yemen, Syria, Iran, Somalia, and Libya.[53]

Approximately 4.3 million people are employed in New York City; of those, 46% are foreign-born immigrants.[54] New York City itself employs 287,000 people,[55] 34% of them foreign-born.[56]

51% of New York City's business owners are immigrants.[57]

About 1,300 refugees have been resettled in New York City in the last five years.[58]

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[50] http://www.census.gov/quickfacts/table/PST045215/3651000.

[51] Our Immigrant Population Helps Power NYC Economy, Comptroller Scott Stringer, 2017.

[52] U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

[53] *Id.*

[54] *Id.*

[55] https://www.nytimes.com/2016/10/12/nyregion/bill-de-blasio-government-jobs.html?_r=0.

[56] U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

[57] Our Immigrant Population Helps Power NYC Economy, Comptroller Scott Stringer, 2017.

[58] Data compiled by the Bureau of Population, Refugees, and Migrants Office of Admissions—Refugee Processing Center.

The tourism sector of New York City's local economy includes direct visitor spending in 2015 of $42.2 billion.[59]

In 2015, New York City welcomed 58.5 million visitors, including 12.3 million foreign visitors.[60] The City predicts a 300,000-person drop in foreign visitors this year.[61]

New York City has 87 four-year colleges and universities, with approximately 50,000 international students.[62]

In the three months following the Presidential election, New York City has characterized 43 crimes as possible hate crime incidents,[63] an increase of 115% for the same three-month period.[64]

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59 http://www.nycandcompany.org/research/nyc-statistics-page.

60 *Id.*

61 https://www.nytimes.com/2017/02/28/nyregion/new-york-foreign-tourists-trump-policies.html?_r=0.

62 46,870 foreign students were enrolled during the 2012–2013 school year. https://www.nycedc.com/blog-entry/international-students-nyc.

63 http://observer.com/2016/12/nypd-reports-huge-spike-in-hate-crimes-since-donald-trumps-election/.

64 http://www.ny1.com/nyc/all-boroughs/news/2016/12/5/since-election-day--nypd-reports-a-spike-in-hate-crimes-around-the-city-compared-to-last-year.html.

## LOS ANGELES

The population of our metropolitan area (Los Angeles County) is 10.2 million people, with more than 3.9 million living in the city.[65]

Los Angeles has residents from more than 135 foreign countries, and 185 languages are spoken here.[66]

At least 1.5 million city residents are themselves immigrants, 37.8% of our total population. Approximately 43% of residents of Los Angeles County were born in another country.[67]

As of 2015, the Los Angeles metropolitan area had over 152,000 immigrants from the six affected countries, including 136,000 from Iran, 14,900 from Syria, 600 from Sudan, 500 from Somalia, and 100 from Yemen.[68]

Our city employs approximately 45,000 people, 22% of whom are foreign-born immigrants.

44% of business owners in Los Angeles are immigrants.[69]

Between October 2015 and September 2016, approximately 2,800 refugees were resettled in Los Angeles County, including approximately 2,000 from the six targeted countries, and 1,900 from Iran alone.[70]

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[65] U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.
[66] *Id.*
[67] *Id.*
[68] https://www.brookings.edu/blog/the-avenue/2017/01/30/these-communities-have-a-lot-at-stake-in-trumps-executive-order-on-immigration/.
[69] 2010 ACS Single year estimate.
[70] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center.

185 flights arrive at LAX from international destinations every day, bringing 31,000 passengers, including more than 150 from the targeted countries.[71]

The tourism sector of the local economy accounts for $21 billion a year in direct spending by visitors to Los Angeles County and $260 million in hotel taxes alone. Tourism supports approximately 500,000 jobs in the leisure and hospitality sectors.[72]

In 2016, Los Angeles welcomed 47 million visitors, including 7.1 million foreign nationals who spent $6.3 billion. At least 160,000 visitors hail from the Middle East; they spent at least $185 million while in Los Angeles.[73]

Los Angeles has at least ten four-year colleges and universities, with approximately 25,000 international students.[74]

The Mayor of Los Angeles has reported that hate crime incidents doubled to 30 in the month following the Presidential election.[75]

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[71] LAX officials.

[72] Discover LA.

[73] *Id.*

[74] University enrollment data.

[75] http://abc7.com/politics/garcetti-discusses-las-rise-in-hate-crimes-after-election/1651429/.

## PHILADELPHIA

The population of the City of Philadelphia is approximately 1,526,006,[76] and approximately 6,051,170 for the Philadelphia Metropolitan Statistical Area.[77]

Philadelphia has residents from more than 130 foreign countries.[78]

At least 197,563 of our residents are immigrants.[79]

Approximately 1,456 of Philadelphia residents were born in Iran, Libya, Somalia, Sudan, Syria, and Yemen.[80]

Approximately 640,661 people are employed in Philadelphia, and 108,010 of them are foreign-born (not including individuals who work in Philadelphia but reside outside the city).[81]

In 2013, immigrants made up 14% of business owners in Philadelphia; and immigrants are 28% of the area's "Main Street" business owners, including 23% of retail store owners and 34% of restaurant owners.[82]

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[76] U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

[77] U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014 – United States – Metropolitan and Micropolitan.

[78] U.S. Census Bureau, Place of Birth for the Foreign-Born Population in the United States, 2011-2015 American Community Survey 5-year Estimates.

[79] *Id.*

[80] *Id.*

[81] U.S. Census Bureau, Selected Characteristics of the Native and Foreign-Born Populations, 2011 American Community Survey 5-Year Estimates.

[82] Americas Society/Council of the Americas and Fiscal Policy Institute, Bringing Vitality to Main Street: How Immigrant Small Businesses

In 2016, approximately 682 refugees were resettled in Philadelphia, including 176 from the six targeted countries.[83]

The Philadelphia Metropolitan Area is home to 31 four-year colleges and universities, with 21,273 international students.[84]

The economic impact from tourism in Philadelphia in 2015 was $6.2 billion, including $3.9 billion in direct visitor spending, which generated an estimated $277 million in taxes.[85]

In the three months following the Presidential election, eleven hate crimes were reported to Philadelphia police, a 157% increase over the seven reported in the three-month period around the same time last year.[86] In the same time period, the Philadelphia Commission on Human Relations received reports of 43 separate hate or bias incidents, as compared to just 3 reports during the same time last year, a 1433% increase.[87]

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Help Local Economies Grow, at 16 (available at http://www.as-coa.org/sites/default/files/ ImmigrantBusinessReport.pdf).

[83] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, http://ireports.wrapsnet.org/.

[84] CampusPhilly; Christine Farrugia, Rajika Bhandari, Ph.D., 2015 Open Doors, Report on International Educational Exchange.

[85] Philadelphia Convention and Visitors Bureau (Staff Person), citing Tourism as an Economic Engine for Greater Philadelphia 2015 Visitation and Economic Impact Report, http://files.visitphilly.com/Visit-Philly-2015-Visitation-and-Impact-Full-Report.pdf.

[86] Philadelphia Police Department, Research and Analysis Unit Statistical Section; see also Uniform Crime Reporting System, Monthly Summary Hate/Bias Motivation Report for Philadelphia City, http://ucr.psp.state.pa.us/UCR/Reporting/Monthly/Summary/MonthlySumHateUI.asp?rbSet=4.

[87] Philadelphia Commission on Human Relations.

## CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2017, I electronically filed the foregoing Brief and Appendix of Chicago, Los Angeles, New York, Philadelphia, and Other Major Cities and Counties as *Amici Curiae* in Support of Affirmance and in Opposition to a Stay Pending Appeal with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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## CERTIFICATE OF COMPLIANCE

This brief and appendix comply with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because they use a proportionally spaced typeface (Century Schoolbook) in 14-point using Microsoft Word. The brief and appendix comply with the type-volume limits of Fed. R. App. P. 29(a)(5) because they together contain 6,371 words, which is less than half of the 13,000 words allowed for principal briefs under Fed. R. App. P. 32(a)(7)(B)(i).